UNITED NATIONS

CCPR

International Covenant on Civil and Political Rights

Distr.
GENERAL

CCPR/C/SR.1399
10 April 1995

ORIGINAL: ENGLISH

HUMAN RIGHTS COMMITTEE

Fifty-third session

SUMMARY RECORD OF THE 1399th MEETING

Held at Headquarters, New York,
on Tuesday, 28 March 1995, at 10 a.m.

Chairman: Mr. AGUILAR

CONTENTS

ELECTION OF THE CHAIRMAN AND OTHER OFFICERS OF THE COMMITTEE (continued)

ORGANIZATIONAL AND OTHER MATTERS

Draft general comment on article 25 of the Covenant

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Chief, Official Records Editing Section, Office of Conference and Support Services, room DC2-794, 2 United Nations Plaza.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

95-80528 (E)

The meeting was called to order at 10.25 a.m.

ELECTION OF THE CHAIRMAN AND OTHER OFFICERS OF THE COMMITTEE (continued)

1. Mr. ANDO nominated Mr. Bhagwati and Ms. Chanet for the offices of the third Vice-Chairman and Rapporteur, respectively.

2. Mr. MAVROMMATIS, Mr. LALLAH, Mr. PRADO VALLEJO and Mrs. HIGGINS seconded the nominations.

3. Mr. Bhagwati was elected Vice-Chairman and Ms. Chanet was elected Rapporteur by acclamation.

ORGANIZATIONAL AND OTHER MATTERS

Draft general comment on article 25 of the Covenant (CCPR/C/53/CRP.1)

4. Mr. BÁN, speaking as Chairman/Rapporteur of the Working Group on Article 40 of the Covenant, introduced the draft general comment on article 25 (CCPR/C/53/CRP.1), which had been prepared by the Working Group on the basis of a draft by Mrs. Evatt.

5. He requested the Committee to bear two considerations in mind. First, the Committee had to choose between interpreting article 25 as a procedural guarantee for citizens that had to be respected by States parties regardless of the bodies elected, or interpreting it as a document which enshrined substantive rights. In the latter case, citizens would be empowered to participate in bodies exercising real power. The actual text of the draft comment reflected the second approach.

6. In addition, the draft highlighted some of the broader issues surrounding article 25. Those issues also had some bearing on articles 19 and 22 of the Covenant.

7. Mrs. EVATT indicated that the difficult issues had proved to be a definition of the concept of "conduct of public affairs" and the extent of citizens' participation in those affairs. The text of the draft comment currently before the Committee implied that the validity of executive and legislative power derived from the participation of individuals in the totality of that power. Furthermore, the Committee should bear in mind the allocation of judicial powers, the issue of reserved powers, for example those of monarchs, and questions of equality and non-discrimination in the context of representation.

8. Mr. BRUNI CELLI said that the matter of an independent electoral authority should be dealt with in a separate paragraph rather than being incorporated into paragraph 18 of the draft general comment. He also noted that the practice of employing observers when conducting elections was currently very widespread. The draft made no reference to a country's willingness to receive such observers, and he felt it would be useful to include an appropriate reference. On a more general level, certain paragraphs of the draft made reference to a

number of different topics; he wondered whether it might not be possible for the Committee to organize its ideas a little more clearly, which would make it easier for States parties to digest the contents.

9. Mr. FRANCIS said he was unsure whether the nature and behaviour of political parties would be better dealt with in a general comment on article 25 or article 22. He pointed out that in countries which had a party political system, the leader of the opposition played an institutionalized role under the constitution. In the context of political power, the person leading the opposition owed his position to the party machinery which elected him, and if that party did not have an election process as free and fair as that obtaining in the country as a whole, problems might arise.

10. Mr. KRETZMER said that a special section on the right to citizenship should be added to the draft. If the right to participate in public affairs under the Covenant was restricted to citizens, it was naturally crucial to know about the criteria for acquiring citizenship.

11. Mr. KLEIN endorsed the substantive view of article 25 outlined by Mr. Bán and Mrs. Evatt, but wished the Committee to be aware of some of its disadvantages. He cited the example of the Treaty of Maastricht and the issue of its compatibility with the German Constitution. The treaty had been challenged on the ground that the German people's right to elect representatives to the legislature would be meaningless if the latter transferred its powers to the European Union. The Committee should also clarify the distinction between eligibility for office and incompatibility of offices once elected; any grounds restricting eligibility were obviously much more serious than problems arising from incompatibility. Lastly, greater emphasis needed to be placed on the right to judicial protection and review, particularly in the context of subparagraph (c) of article 25.

Paragraph 1

12. Mr. ANDO said that the side headings introduced in the draft were helpful, but that the Committee should approve that change in format. It should also decide whether the issues discussed in paragraph 24 and following should be further elaborated or limited to their relevance to article 25.

13. The last sentence of paragraph 1 appeared unnecessary, and could be deleted.

14. Mrs. HIGGINS said that she favoured retaining the last sentence of paragraph 1 and perhaps elaborating on the Committee's reasons for issuing the general comments, since the provisions of article 25 were not self-evident.

15. Mr. LALLAH observed that the concept of a general comment itself was a product of the cold war, since during that era, not all members of the Committee were comfortable with issuing comments on individual reports, preferring to make generalized comments based on information gathered from many reports.

16. Mr. BUERGENTHAL noted that the only authorities cited were cases based on individual petitions submitted to the Committee under the Optional Protocol.

The concluding comments on State party reports, however, contained many other valuable observations that could show the evolution in Committee practice and could help to support its position.

17. Mr. BHAGWATI associated himself with the suggestion of Mr. Bruni Celli that particular emphasis should be placed on the independent electoral authority and on the practice of appointing electoral observers. He did not see the need to delete the last sentence of paragraph 1, but the beginning of the penultimate sentence could be redrafted to read: "Article 25 lies at the core of democratic government".

18. Mrs. EVATT said that references to concluding comments could be included in the form of footnotes to the text.

19. Mr. POCAR agreed that more weight could be given to the Committee's recommendations on reports of States parties, even though the practice had been followed for only a few years. He would prefer to retain and expand the last sentence of the first paragraph. With regard to its second sentence, it was actually article 2 which imposed the obligation on States to adopt measures, and he preferred not to see a right in and of itself reduced to a State obligation.

20. Mr. FRANCIS said that he saw some difficulty in defining the concept of "public affairs" as used in the first sentence of the paragraph; it should encompass more than government processes in a democratic system with a political party structure.

21. Mrs. MEDINA QUIROGA said that she supported Mr. Buergenthal's suggestion and saw a positive benefit in incorporating the Committee's case-law into its general comments. Rather than stating its views on the application of article 25, the Committee was giving its interpretation of that article, which must be stressed in the text.

22. Mrs. HIGGINS had some hesitation about referring to concluding comments. The case-law which had developed through communications under the Optional Protocol dealt with particular points of law that had emerged in individual cases. Drawing attention to the general shortcomings of States parties might cause some discomfort, however.

23. Referring to a point raised by Mr. Pocar, she suggested that the second sentence should be redrafted to read: "Whatever form of constitution or government is adopted by a State, article 25 guarantees an effective opportunity to enjoy the rights it protects. It necessarily follows that States must adopt such legislative or other measures as may be necessary to ensure that citizens have an effective opportunity to enjoy the rights it protects."

24. Mr. LALLAH agreed with Mrs. Higgins that the Committee's case-law was clear and precise, while some research would be required regarding comments on State party reports. In order to make a more authoritative statement, the last sentence of the paragraph should be amended to read: "The Committee considers that the rights contained in article 25 of the Covenant emphasize the important role played by democratic Government in securing the protection of rights."

25. Mr. BÁN said that the use of the term "democratic" gave him pause since it was not clear to him that article 25 required States parties to have a democratic form of government. The absence of democratic institutions need not necessarily result in any failure to comply with article 25.

26. Mr. KRETZMER said that the Committee should avoid linking its views on the central importance of democracy to human rights with its reasons for issuing the general comment.

27. Mr. ANDO said that, since the penultimate sentence of the paragraph gave the Committee's understanding of article 25, the last sentence appeared repetitious, but that it could be useful to expand the explanation of the central importance of that issue.

28. Regarding the issue raised by Mr. Bán, it was true that some countries still governed by monarchies had good guarantees of human rights. In his view, the general comment should not go into the meaning of democracy but should confine itself to procedure.

29. Mr. EL-SHAFEI said that the Committee's difficulty in reaching agreement on that paragraph was surprising. He preferred the formulation suggested by Mr. Lallah for the last sentence because it spoke of the important role of States parties in securing rights under article 25.

30. Mrs. HIGGINS said that the Committee would be remiss in its duty if it did not make it clear to States that in the absence of a working democracy, it was extremely hard to guarantee at least some of the rights embodied in the Covenant. The Committee should commit itself publicly to the view that the wording of article 25 implied a plurality of choices among candidates representing alternative political views.

31. Mrs. MEDINA QUIROGA, supporting the view expressed by Mrs. Higgins, said it was possible to imagine that a non-democratic State which was not violating the other rights contained in the Covenant would none the less be violating those contained in article 25.

32. Mr. KLEIN agreed strongly with the view expressed by Mrs. Higgins. Given recent political developments in the world, the Committee should take the opportunity to define clearly what was meant by democracy.

33. He supported the proposal that the last two sentences of the paragraph should be run together, thereby avoiding the need to include the words "has decided to explain".

34. The CHAIRMAN, speaking in his personal capacity, said that it would be good to take account of Mr. Pocar's suggestion regarding the final sentence of the paragraph. He also agreed with Mrs. Higgins' modification of the second sentence, and with Mr. Bhagwati's suggestion that it should be stated that article 25 lay at the core of democratic government.

35. Mr. POCAR suggested that the end of the paragraph should be modified to read: "Article 25 supports the process of democratic government based on the

consent of the people and in conformity with the principles of the Covenant; in the Committee's view, the important role played by democratic government (or 'played by such process') in securing the protection of rights must be emphasized."

36. Mr. BUERGENTHAL suggested that the word "critical" might be substituted for the word "important".

37. Mr. POCAR said that that suggestion was acceptable.

38. Mrs. EVATT welcomed the preponderance of views in favour of including a comment supporting full democracy, and agreed with Mr. Pocar's proposal for amending the end of the paragraph, as sub-amended by Mr. Buergenthal.

39. Mr. LALLAH proposed that, in the second sentence, the wording "legislative or other measures" should be replaced by "legislative and other measures", and that the semicolon following the words "the principles of the Covenant" should be replaced by a full stop.

40. Paragraph 1, as amended, was adopted.

41. Mr. ANDO expressed agreement with the point made by Mrs. Medina Quiroga that the absence of democracy would be a violation of article 25 even where other human rights were respected. It was also true that under a democratic system situations could arise in which human rights were not respected.

42. Mr. KLEIN agreed with Mr. Ando, and recalled that paragraph 27 of the draft general comment made it clear that there were limits to the exercise of the rights contained in article 25 of the Covenant.

43. Mr. FRANCIS said that he considered the expression "public affairs" to have a wider meaning than that in which it was used in the context of the first paragraph.

Paragraph 2

44. Mr. KRETZMER suggested that the end of the paragraph should read: "Article 25 deals with the rights of individual citizens to participate in the conduct of public affairs, which, as individual rights, can give rise to claims under the first Optional Protocol."

45. Mrs. MEDINA QUIROGA expressed concern about the respective meanings of "citizen" and "national" of a country. She wondered whether "citizen" had the same meaning as "ciudadano" in Spanish, and whether the defining characteristic was having the right to vote.

46. The CHAIRMAN said that it was important to be aware of the fact that the terms could have different meanings. Certain States made a clear distinction between "citizens" and "nationals".

47. Mrs. HIGGINS agreed that it was a difficult problem. The word "citizen" had, however, been used correctly in the English text, since in that context it was a matter of the right to vote.

48. It was important to differentiate between the right of self-determination, as described in article 1 of the Covenant, and the right of the individual to vote, which was covered by article 25; the latter also went beyond the right to vote, in that it also concerned participation in public affairs.

49. Mr. LALLAH suggested that the word "citizens" could be avoided in paragraph 2, which concerned the rights of individuals.

50. Mr. BUERGENTHAL agreed with Mrs. Higgins regarding the difference between "citizen" and "national", and with Mr. Kretzmer regarding the wording of the end of the paragraph.

51. Mrs. EVATT, supported by Mr. Ando, proposed that the Committee should adopt the wording suggested by Mr. Kretzmer. She also proposed that the paragraph should begin "The rights under article 25 ...", and that the final sentence of the paragraph should be amended to refer to "the rights of individuals".

52. Paragraph 2, as amended, was adopted.

Paragraph 3

53. Mr. BUERGENTHAL said that, since some countries made unreasonable distinctions between natural-born citizens and naturalized citizens, virtually excluding naturalized citizens from participation in various aspects of public life, the paragraph should include stronger language on non-discrimination.

54. Mrs. HIGGINS wondered whether "deprivation of citizenship" in the last sentence referred to citizenship or nationality. If it implied deprivation of nationality, a phrase should be added to indicate that loss of nationality which entailed statelessness was unreasonable. If it implied the deprivation of citizenship, she wondered whether that pertained to the right to vote or to the right to enter the country as well. In fact, it was not clear that the last sentence was really necessary.

55. Mrs. EVATT, referring to Mr. Buergenthal's remarks, informed the Committee that an earlier draft of the general comment had included the phrase "whether by birth or by naturalization" after "every citizen" in the second sentence. It had subsequently been deleted because the Working Group had decided that it would be reasonable to impose restrictions, in certain cases, for example, to establish a waiting period before naturalized citizens were entitled to vote. The Committee should decide whether such restrictions should be dealt with in the paragraph.

56. Turning to Mrs. Higgins' remarks, she said that each country's definition of citizenship would determine whether individuals enjoyed the rights embodied in article 25. Clearly, those rights could be lost either as a result of a restriction whose reasonableness could be assessed under article 25, or through a loss of citizenship. The Committee should also consider cases of arbitrary

deprivation of citizenship which resulted in a loss of rights. The last sentence could be deleted if necessary. The Committee must decide on the scope of the paragraph.

57. Mrs. HIGGINS noted that the Committee did not generally consider limitations of rights which were not already implied. For example, the Committee had seen in States parties' periodic reports that many countries deprived prisoners of the right to vote, which was completely unrelated to nationality. Therefore, perhaps the sentence should be replaced by a sentence on the implied limitations to exercising the right to vote. Concerning the distinction between natural-born and naturalized citizens, she said that it was perfectly reasonable for States to require a waiting period before new residents could vote, but that once they became naturalized, they should be considered full and equal citizens in every way.

58. Mrs. MEDINA QUIROGA noted semantic discrepancies between the English and Spanish versions. Article 25 did not deal with nationality but rather with the right to vote and to be elected to public office. The Spanish term ciudadanos specified that concept and it should be made clear in the English version as well.

59. Article 25 implied that persons eligible to vote met certain requirements established by law, for example the attainment of legal age. Perhaps the general comment should contain a separate paragraph spelling out those requirements. She drew attention to paragraph 10, which referred to the suspension of the right to vote during detention. It was extremely disturbing that, in certain countries, prisoners were deprived of the right to vote even before they were convicted.

60. The CHAIRMAN noted that the French version used the word citoyens and the Spanish text, ciudadanos, and that "national" meant "citizen" in the legal systems of most countries where those languages were used. The problem seemed to lie with the English text. At the request of Mr. Buergenthal, he read out the Spanish text.

61. Mr. KLEIN said that he opposed deleting the final sentence. Obviously, a loss of citizenship meant a loss of voting privileges, but a distinction must be made between that situation and restrictions placed on a citizen's right to vote. The Committee should also consider the possibility that a State might deny the right to vote through the deprivation of citizenship.

62. Concerning Mr. Buergenthal's remarks, he said that it would be excessive for the Committee to force States to treat natural-born and naturalized citizens as equals without any distinction whatsoever. (For example, he believed that the United States Constitution required presidential candidates to be born in the United States of America.) The general comment should require that such distinctions must be based on reasonable, and not arbitrary, grounds.

63. Mr. KRETZMER, reiterating his earlier general remarks, said that, in addition to describing the provisions of law governing citizenship, States should spell out the legal impediments to acquiring citizenship and provide information as to whether significant numbers of persons residing in their

territories were unable to participate in the political process because they were not citizens.

64. Mr. LALLAH noted that the discussion had centred on semantic differences but that the question went much deeper. The Committee should consider the object and purpose of the rights embodied in article 25 and whether it was fair to deprive nationals of the right to participate in public affairs which affected their lives. In English, the term "citizen" included not only natural-born citizens but also those persons who had been naturalized and had made their lives in that country. Perhaps the concepts in the French and Spanish systems predated the Covenant and should be reassessed with a fresh eye.

65. The Working Group had discussed the issue of natural-born and naturalized citizens but, in the end, had decided that the drafting difficulties it posed should be resolved by the Committee. The Committee should clarify the concept of citizenship in the final sentence of the paragraph. In some States, deprivation of citizenship meant loss of civic rights while, in others, persons convicted of crimes were deprived of their right to vote under criminal legislation.

66. The CHAIRMAN clarified that ciudadano in Spanish referred to every national who had the right to vote or be elected, whether or not that person had been born in the country. In a few Spanish-speaking countries, persons could not seek the office of President unless they were natural-born citizens. That did not apply to candidacy for other national offices, however.

67. Mr. POCAR wondered if the sentence requiring State reports to describe provisions of law should be clarified. He proposed deleting the words "within the territory and subject to the jurisdiction of the State" from the first sentence, even though it was the formulation used in article 2 of the Covenant. In the past, combining the two conditions had created problems, since it was perfectly possible for a State to incur the obligation to protect individual rights when only one of those conditions existed.

68. Mrs. MEDINA QUIROGA thanked Mr. Lallah for highlighting the essence of the problem with regard to the interpretation of citizenship. Indeed, the first sentence of article 25 was not fully elaborated. Had it provided a more specific enumeration of undue restrictions on the right to vote, the confusion over the terms used in Spanish and in English would not have arisen. In any case, the Spanish made sense only if the word nacionales was used, meaning that anyone who had made his or her life in a particular country should enjoy the rights guaranteed under article 25 without restriction. Perhaps the draft general comment should attempt to be more precise than the language of the Covenant by including a full paragraph on acceptable restrictions on the right to vote.

69. Mr. BUERGENTHAL said that the remarks made by Mr. Lallah and Mrs. Medina Quiroga warranted further consideration. He agreed with Mr. Pocar that the phrase concerning territory should be deleted from the first sentence. If the last sentence continued to be a problem, perhaps it could be amended to read: "If provisions are made to restrict citizenship rights, the grounds

should not be arbitrary or unreasonable." In its current form, the sentence seemed to permit the deprivation of citizenship.

70. Noting that the restriction on candidacy for the United States presidency was probably more historical than reasonable, he suggested appending the phrase "including, in particular, the distinction between natural-born and naturalized citizens" to the end of the sentence beginning "Any restrictions imposed ...".

71. Mrs. EVATT acknowledged that the paragraph posed a problem. If the Spanish text could be interpreted differently from the English, the Committee should take a fresh look at how States defined citizenship and how their definition affected the exercise of the rights enshrined in article 25 of the Covenant. The intent of the paragraph was simply to identify who could exercise those rights and to stress that eligible persons should not be arbitrarily excluded. The issue of natural-born versus naturalized citizens could also be dealt with in that framework. She proposed that the discussion should be suspended until further consideration could be given to the appropriateness of the word "citizenship".

72. Mr. PRADO VALLEJO agreed that further reflection was necessary not only on what was explicitly stated in the paragraph but also on what was implied. In that connection, he recalled that, for nearly a decade, the Brazilian dictatorship had denied certain citizens the right to vote or stand for election on purely political grounds.

73. Mrs. HIGGINS agreed that greater thought should be given to all the aspects raised by Mr. Lallah. Moreover, the Committee had not even considered the consequences of the liberal granting of citizenship in those countries with a generous immigration policy. She believed that such countries should be encouraged to grant the right to vote to immigrant workers. However, if citizenship also entitled them to enter and reside in the country indefinitely, it could cause problems.

The meeting rose at 1 p.m.